IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10792 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AGRICULTURAL PRODUCE MARKET COMMITTEE - Petitioner(s)
Versus
COLLECTOR & 1 - Respondent(s)

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Appearance :
MR SUNIL K SHAH for Petitioner(s) : 1,
MR AY KOGJE, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 14/11/2006

ORAL JUDGMENT

1. By the present writ application, the present petitioner challenges the order dated 2nd September, 1993 passed by the Secretary

[Appeals], Revenue Department, State of Gujarat. Brief facts necessary for disposal of this writ application are that, somewhere in the year 1960, the petitioner was granted revenue free land of survey no. 585 of Sheet No.39 of Deesa. The petitioner, with the permission of the authorities, raised a cattle shed, Rest House and also made a holding yard. Almost after 21 years, the petitioner made an application to the Collector that he be allowed to raise construction of shops so that the shops could be used and utilized by the agriculturists/farmers. The application came to be decided in the year 1988, the Collector ordered that the petitioner would be entitled to make construction of shops on 1108 sq.mts., subject to payment of premium at the rate of Rs.805/- per sq.mt. The petitioner, being aggrieved by the said order filed revision to the Secretary, but the same was also rejected. It appears that the petitioner deposited the said amount for 1108 sq.mts. at the rate of Rs.805/- per sq.mt., but proposed to challenge the order passed by the

Collector essentially on the grounds that the delay between 1981 to 1988 led to escalation in the price and the petitioner cannot be held answerable to pay the additional price, that the date of the application should be the date for fixing the premium and not year 1988 when the application was granted.

2. Shri Shah, learned counsel for the petitioner submits that from the records, it would clearly appear that the application remained pending with the Collector for long seven years and there were no lapses on the part of the petitioner, therefore, it cannot be held liable to pay higher price after lapse of seven years. His further submission is that if the application was disposed of or decided in the year 1981 or immediately thereafter, then, the petitioner would have been called upon to pay or deposit the premium as applicable in the year 1981 or immediately thereafter.

3. On being asked that whether from 1981 to 1988, the petitioner made any application for early disposal of his application or did he approach

to any higher authority seeking direction against the Collector for early disposal of the matter, Shri Shah submitted that reminders were sent to the Collector, but the same have not been filed in this Court. In absence of positive proof of such reminders, which are certainly possessed by the petitioner, it cannot be held that the petitioner did approach the authority or made a request for disposal of the application.

4. So far as the question of price is concerned, the price to be charged would not be on the date of the application, but on the date of the order. It may altogether be a different thing that the price in the years 1981-82 or so was much lesser and it later on shot up to a great extent, it would not be possible to hold that the order though passed in the year 1988 would be deemed to have been passed in 1981 or 1982. The petitioner's rights would stand crystallized on the date of the order passed by the Collector and not before that, therefore, the date for fixing the premium would be the date of the

order and not otherwise.

5. Placing reliance upon the Single Bench judgment of this Court in the matter of **Ashutosh Sarkari Karmachari Co-Op. Housing Society Ltd. v. State of Gujarat & Anr. [1995 [2] GLR 1419]**, it is submitted that fixing of the premium on the date of the allotment would be tainted with the "procedural impropriety" and the action can certainly be reviewed by this Court under Article 226 of the Constitution.

6. Taking into consideration the totality of the circumstances and specially the fact that the petitioner has not explained his conduct between the years 1981 to 1988, I do not think that the petitioner would be entitled to any relief. The petition deserves to and is accordingly dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

[R.S. GARG, J.]

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